IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2008

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Criminal Revision Case No.2 of 2006

D.Selvaraj . . Petitioner

Vs.

State rep. by
Inspector of Police,
Bhuvanagiri Police Station. . . Respondent

The Criminal Revision case is filed against the judgment dated 10.08.2005 passed in C.C.No.27 of 2000 on the file of District Munsif cum Judicial Magistrate, Protonovo as confirmed by judgment dated 23.12.2005 passed in C.A.No.97 of 2005 on the file of Additional District Judge and Fast Track Court No.I, Cuddalore at Chidambaram and to set aside the conviction and sentence passed under Section 304(A) I.P.C. and acquit the accused/petitioner.

For Petitioner :Mr.K.V.Sridharan
For Respondent :Mr.R.Munniapparaj
Government Advocate (Criminal Side)

ORDER
The driver of a passenger bus belonging to Tamil Nadu Transport Corporation which met with an accident on 24.07.1999 at about 07.00 p.m. at Keezh Bhuvanagiri, after having been prosecuted, found guilty, convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.2,000/- in default sentenced to undergo two months simple imprisonment for an offence punishable under Section 304(A) IPC by the trial Court namely the District Munsif-cum-Judicial Magistrate, Parangaipettai in C.C.No.27 of 2000 and after unsuccessfully prosecuting an appeal in Crl.A.No.97 of 2005 before the Additional District Judge (Fast Track Court No.I), Cuddalore at Chidambaram has come forward with the present criminal revision case.

2. A case was registered based on the complaint of PW1on the file of Bhuvanagiri Police Station in Cr.No.295 of 1999 for an alleged offence punishable under Section 304(A) IPC. The allegations found in the complaint are to the effect that on 24.07.1999 at about 07.00 p.m. the passenger bus bearing Registration Number TN 32N 1136 was driven by the petitioner/accused from east to west on Chidambaram to Cuddalore Main Road in a rash and negligent manner as a result of which the said bus dashed against the deceased Ravi who was proceeding in his bicycle in the opposite direction keeping the left side (eastern side) of the road; that due to the said impact the said Ravi sustained grievous injuries on the head and other parts of the body; that PW1 and others took him in an autorickshaw to the Government Hospital, Chidambaram where he was declared dead by the

Medical Officer and that thereafter PW1 went to Bhuvanagiri police station and lodged a complaint in writing which has been marked as Ex.P1. PW11- the Inspector of Police, Bhuvanagiri Police Station, took up the investigation, visited the spot, prepared the observation mahazar and rough sketch, examined the witnesses, conducted inquest, collected post mortem report and the report of the Motor Vehicle Inspector and after completion of investigation, submitted a final report alleging that the petitioner/accused had committed an offence punishable under Section 304(A) IPC. The same was taken on file by the District Munsif-cum-Judicial Magistrate, Parangipettai as C.C.No.27 of 2000. After appearance of the petitioner/accused necessary charge under Section 304(A) IPC was framed. The petitioner/accused, pleaded not guilty. Hence, the trial was conducted in which eleven witnesses were examined as PW1 to PW11 and ten documents were marked as Ex.P1 to Ex.P10 on the side of the prosecution. After completion of evidence on the side of the prosecution, the incriminating materials found in the evidence adduced on the side of the prosecution were brought to the notice of the petitioner/accused in the form of questionnaire under Section 313 Cr.P.C. The petitioner/accused denied the said evidence to be false and once again pleaded not guilty. No witness was examined and no document was marked on the side of the petitioner/accused .

3. The learned Judicial Magistrate heard the arguments advanced on either side and considered the arguments advanced on either side. Upon such consideration, the learned trial Judge held that the charge under Section 304(A) IPC against the petitioner/accused was proved beyond reasonable doubt. Consequently, holding the petitioner/accused guilty of the said offence recorded conviction after giving an opportunity to the petitioner/accused to make his representation regarding the punishment to be imposed and imposed a sentence to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- and in default to undergo two months simple imprisonment. Aggrieved by the said order of conviction and sentence, the petitioner/accused preferred an appeal on the file of the learned Principal District and Sessions Judge, Cuddalore. The said appeal was taken on file as Crl.A.No.97 of 2005 and made over to the Additional District and Sessions Judge, (Fast Track Court No.I), Cuddalore. The learned lower appellate Judge, after hearing the arguments advanced on both sides, concurred with the trial Court and dismissed the appeal confirming the conviction and sentence. Hence the petitioner/accused is before this Court in this criminal revision case.

4. This Court heard the arguments advanced by Mr.K.V.Sridharan, the learned counsel for the petitioner and Mr.R.Munniapparaj, the learned Government Advocate (Criminal Side) on behalf of the State and this Court also perused the materials available on record.

5. The accused in C.C.No.27 of 2000 on the file of the learned District Munsif-cum-Judicial Magistrate, Parangipettai who was prosecuted for an offence punishable under Section 304(A) IPC and convicted for the same is the present revision petitioner. The order of conviction recorded and the sentenced imposed by the trial Court were confirmed in appeal by the Additional District and Sessions Judge (Fast Track Court No.I), Cuddalore at Chidambaram in Crl.A.No.97 of 2005.

6. The fact that the petitioner/accused was the driver in charge of the offending vehicle, namely the passenger bus bearing Registration No.TN 32N 1136 and that the said bus met with an accident on 24.07.1999 at about 07.00 p.m. on Chidambaram to Cuddalore Main Road and that in the said accident one Ravi a cyclist got injured which proved to be fatal have not been disputed. PW1, one of the alleged witnesses who took the injured from the place of occurrence to the hospital in an auto rickshaw in an attempt to save his life was the informant also. The complaint lodged by PW1 in writing has been produced and marked on the side of the prosecution as Ex.P1. Three more persons who allegedly witnessed the occurrence have been examined as PW2 to PW4. The observation mahazar and the rough sketch prepared by the Investigating Officer, namely PW11 has been marked as Ex.P6 and Ex.P7 respectfully. Post Mortem certificate issued by the medical officer who conducted autopsy is Ex.P3. Apart from the admission that the deceased Ravi died due to injuries

sustained by him in the accident, there is overwhelming oral and documentary evidence to that effect. Hence, the finding of the trial Court which was confirmed by the lower appellate Court that the said Ravi died due to the injuries sustained in the accident has got to be recorded so. There is no scope, whatsoever, for interfering with the same in this criminal revision case.

7. The only point on which the learned counsel for the petitioner has based his arguments in this criminal revision case is that the prosecution has not proved its case that the petitioner/accused acted with rashness and negligence in driving the motor vehicle at the relevant point of time beyond reasonable doubt and that the Courts below have committed an error in not considering the fact that all the witnesses alleged to have seen the occurrence are not the residents of the place of occurrence. The learned counsel for the petitioner has also relied on the fact that only there was a delay of two hours in lodging the complaint but also there was a delay of two days in sending the First Information Report to the Judicial Magistrate concerned. It is true as per the prosecution case, the accident took place at about 07.00 p.m. on 24.07.1999 and the complaint was lodged in Bhuvanagiri Police Station at 09.00 p.m. on the same day. The fact that the accident did not result in the death of the injured on the spot, but he died on the way to the hospital and that the informant, namely PW1 was the person who took him in an auto rickshaw to the Chidambaram Government Hospital, where on their arrival the Medical Officer declared the injured dead, will be a proper and sufficient explanation for the delay of two hours in lodging the complaint with the police. Of course, it is true that Ex.P1 complaint and Ex.P5 First Information Report bear the seal dated 26th July 1999 of the Court of the District Munsif cum Judicial Magistrate. But it is not clear as if the date written by the District Munsif cum Judicial Magistrate is 26.07.1999 or 24.07.1999. This aspect was not adverted to during trial and no question was put to any one of the witnesses, including the investigation officer during their cross examination by the counsel for the accused. Therefore, such a new stand taken by the petitioner in this revision cannot be entertained and it cannot be sustained. Further more, the mere fact that there has been two days delay in sending the First Information Report to the Court will not be enough to disbelieve the case of the prosecution unless the same is capable of casting a reasonable doubt that the complaint and the First Information Report would have been brought into existence after deliberation using the time gap or that some kind of embellishment would have been made by introducing new witnesses or a story different from the actual one. Such sort of contention was never raised by the petitioner/accused before the trial Court. The witnesses, namely PW1 to PW4 have deposed in one voice as to how they happened to be there in the place of occurrence to witness the accident. There is not even a suggestion to PW1 that he did not see the occurrence. PW2 was cross-examined by a single suggestion that he was not an eyewitness. In view of the said fact this Court is not in a position to accept the contention of the learned counsel for the petitioner that the witnesses PW1 to PW4 could not have seen the occurrence and they were not the actual eyewitness.

8. The further contention of the learned counsel for the petitioner is that the admission made by PW1 to the effect that immediately after the impact, the bus was stopped by the driver would show that there was no rash and negligent driving on the part of the petitioner/accused. This Court, after going through the said part of the evidence, is of the view the said submission seems to have been made on a misconception that PW1 has admitted that the vehicle was stopped without further movement soon after the impact it made with the bicycle. On the other hand, the said statement of PW1 was intended to mean that it was not a hit and run case and that soon after the accident the vehicle was stopped and the driver of the vehicle, namely the petitioner herein/accused got down from the bus and sped away from the place of occurrence.

9. It is the further contention of the learned counsel for the petitioner that though the eyewitness have spoken to the fact that the vehicle was running at a high speed and hit against the bicycle, they have not unambiguously testified to the effect that there was either negligence or rashness on the

part of the driver of the vehicle, namely the petitioner/accused. The factual aspect alone need be spoken to by the witnesses. Whether the said factual aspect constitute the necessary ingredients of the offence is to be inferred by the Court and that the same cannot be left to be decided by the witnesses who are legal laymen. In the case on hand, the eyewitnesses have clearly spoken to the fact that the bus was proceeding on a high speed; that the cyclist was proceeding on the east west road in the direction of west to east keeping the extreme left side (eastern side) of the road and the bus that was proceeding in the opposite direction, namely east to west, ought to have kept its left side, but had gone to the wrong side of the road and hit against the cyclist. The said fact is corroborated by the observation mahazar as well as the rough sketch prepared by the Investigating Officer marked as Ex.P6 and Ex.P7 respectfully. When there is no explanation forthcoming from the accused as to how and under what circumstances the accused drove the vehicle to the extreme right side of the road the principle of Res ipso loquitur has to be applied. It is a fit case in which the said principle can be applied and applying such principle, the accused can be held guilty of driving the vehicle in a rash and negligent manner and causing the death of the deceased. As such, this Court finds no defect or infirmity in the judgments of the Courts below recording a conviction for an offence punishable under Section 304(A) IPC. There is no ground whatsoever to interfere with the same and the same has got to be confirmed.

10. The learned counsel for the petitioner at last pleaded indulgence of this Court in respect of sentence. The appellant has been sentenced to undergo simple imprisonment for a period of six months and to pay a sum of Rs.2,000/- as fine and in default of payment of fine to undergo simple imprisonment for two months. The punishment prescribed under Section 304(A) IPC is imprisonment of either description for a term that may extend upto two years or with fine or with both. But considering the facts and circumstance of the case, this Court is of the view that the sentence awarded by the trial Court and confirmed by the lower appellate Court is neither harsh nor excessive. Therefore there is no scope for interference with the sentence also in this criminal revision case. Hence the criminal revision case is dismissed. No costs.

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To
The Additional District Judge (Fast Track Court No.I)
Cuddalore at Chidambaram.